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Paper No. 8

In re Application of :  
Paul F. Connelly, Jr. : DECISION ON  
Application No. 09/819,201 : RENEWED PETITION  
Filed: March 28, 2001 :  
Attorney Docket No. PRC 00422 :

This is a decision on the renewed petition filed by on September 22, 2003 by which petitioner again requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated April 8, 2002. The renewed petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The renewed petition is denied.

Petitioner alleges that the application is not in fact abandoned, because a proper reply to the Office letter in question was in fact filed on August 14, 2002, and the reply was timely filed by reason of a concurrent request for a one month extension of time and payment of the \$55.00 extension fee.

A review of the record shows that the Office action dated April 8, 2002 set a shortened statutory period for filing a reply thereto which ran three months from the date of that action. The reply is of record in the application file as paper No. 4, and is endorsed as "not entered" (N.E.) because the response was considered to be untimely due to the fact that it was received more than three months after the April 8, 2002 date of the Office action.

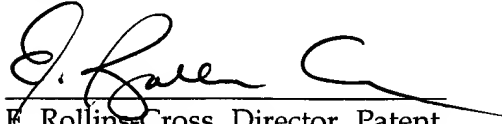
Petitioner has now supplied evidence in the form of a copy of a post card receipt showing that a check in the amount of \$55.00 accompanied the reply in payment of a one month extension of time fee. Office financial records confirm receipt of this fee. In accordance with 37 CFR 1.136(a), payment of the extension fee is considered to be a constructive petition for an extension of time.

However, even considering that the period for filing a reply to the Office action dated April 8, 2002 was extended to run through August 8, 2002, four months from the date of the Office action, it is clear that the reply was not timely filed. August 8, 2002 was a Thursday, and therefore, a reply received after that date would have required that the period for response be extended more than one month. With respect to a reply filed on August 14, 2002, a two month extension would have been necessary. The record contains no request for an extension of time of time of two months, either a written request or a constructive request, and petitioner has neither alleged that any such extension of time was requested nor furnished evidence showing that a two month extension of time was requested. Accordingly, there is no basis upon which to withdraw the holding of abandonment.

Petitioner may file a request for reconsideration of this decision, provided that the request is filed within two months of the date of this decision. In the absence of evidence establishing that petitioner had requested an extension of time through August 14, 2002, the is, a two month

extension of time, and had paid the fee therefor, the holding of abandonment will not be withdrawn. Petitioner may wish to consider proceeding under 37 CFR 1.137.

PETITION DENIED.

A handwritten signature in black ink, appearing to read "E. Rollins Cross", is written over a horizontal line.

E. Rollins Cross, Director, Patent  
Examining Groups 3710 and 3720

James Ray & Associates  
2640 Pitcairn Road  
Monroeville, PA 15146